

2004 Comprehensive Liability Reform – ESSB 5728

PART 1: JOINT AND SEVERAL LIABILITY REFORM

Under current law, one party in a multi-party lawsuit can be required to pay 100 percent of all damages even if they have been found legally responsible for only 10 percent (or less). This section provides that a defendant cannot be held liable for damages more than double their percentage of fault. For example, if a defendant is found to be 20% at fault they can be held liable for up to 40% of the award.

PART 2: EMPLOYER REFERENCE CHECK

This proposal is designed to protect employers while improving workplace safety. Under this proposal, employers who in good faith disclose job performance, on-the-job conduct or other work-related information about an employee would be protected from lawsuits. The Governor's 1998 Small Business Conference attendees identified this as the second-highest concern facing small business.

PART 3: LIABILITY JUDGMENT INTEREST RATE

This sensible proposal would simply revise old statutory language that has defendants currently paying liability judgment interest rates of at least 12 percent when they lose an appeal. The language was written in the 1970s as an attempt to cap then skyrocketing interest rates in the appeals process. Today, interest rates are much lower, and this proposal would tie liability judgment interest rates to a rate two percentage points above the 26-week Treasury Bill rate (as of January 2003 the "T-Bill" rate was 1.182 percent).

PART 4: MEDICAL MALPRACTICE LIABILITY REFORM

There is a crisis in this state with rapidly escalating medical malpractice insurance premiums. The solution to this problem includes:

- **Cap noneconomic damages** - Places a \$350,000 limit on noneconomic damages (pain and suffering). Economic losses are not capped. Economic losses include, but are not limited to: all future wages, including inflation and promotions; all physician and medical bills; all necessary custodial care, including long-term care, nursing home care and medical equipment; any incidental costs related to the injury, such as special vehicles due to being in a wheelchair; any medical prescriptions; and possibly attorneys' fees paid for, if the facts of the case permit. Because this provision is a constitutional change it requires a two-thirds vote of the House and Senate, and a majority vote of the people.
- **Advance Notice of a Claim** - Requires a claimant to give a 90-day notice of an intention to bring a suit for alleged professional negligence. If notice is given in 90 days of expiration of the statute of limitations, the statute is extended 90 days from the date of the notice.
- **Statute of Repose** - A claim of medical negligence must be brought within 3 years of injury or 1 year from the time the patient/guardian should have reasonably discovered the injury - whichever is first.

- **Evidence of Collateral Sources Payment** - A defendant may introduce evidence of collateral source payments (e.g. personal health insurance) as they relate to damage sought by the claimant. If a defendant introduces such personal evidence, the claimant may also introduce the cost of the premiums for such personal insurance.
- **Changing the Burden of Proof** - Raises the burden of proof in a medical negligence case to "clear, cogent, and convincing" evidence where the patient has signed an informed consent form, but nonetheless alleges he or she did not consent.
- **Binding Arbitration of Disputes** - Patients and health care providers may agree that any future dispute may be resolved through binding arbitration.
- **Allowing Periodic Payments of Future Damages** - A defendant may pay out damages - if over \$50,000 - in periodic amounts. This avoids claimants wasting of an award prior to actual need.

PART 5: CONSTRUCTION LIABILITY

This section was approved last session.

PART 6: SEATBELT DEFENSE

Under current law, in auto accident litigation a defendant is not allowed to enter into evidence whether the plaintiff was wearing his/her seatbelt at the time of the accident. The bill simply allows this information to be presented to a jury.

PART 7: GOVERNMENTAL LIABILITY

Like the private sector, litigation costs for state and local government have increased dramatically over the past several years. These costs are borne by taxpayers and directly impact the essential services government can offer Washington citizens. ESSB 5728 includes the following provisions:

- **State and local government** entities are not liable to pay a claim or judgment by any one person that exceeds \$1,000,000 or any claim or judgment that, when totaled with all other claims or judgments arising out of the same incident, exceeds \$2,000,000. The only exception to this cap applies when a criminal offender previously convicted of rape or murder commits an additional crime of rape or murder while under supervision.
- **Rural public hospitals** are not liable to pay a claim or judgment by any one person that exceeds \$500,000 or any claim or judgment that, when totaled with all other claims and judgments arising out of the same incident exceeds \$1,000,000.

PART 8: CERTIFICATE OF MERIT

This section requires a person initiating an action for personal injury, wrongful death, or damage to property, in which harm is alleged to have been caused by an act which violates the appropriate standard of care to be exercised by a person licensed, certified, or registered by the state to file a "Certificate of Merit". A "Certificate of Merit" requires that within 90 days of filing a lawsuit, a qualified expert must certify that the claim alleged in the suit has merit.